HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE C. V. NAGARJUNA REDDY

WRIT APPEAL NO. 121 OF 2007

Between:

P. Bharathi

..... APPELLANT

AND

Smt. K. Indira and others

.....RESPONDENTS

::JUDGMENT::

Counsel for the Appellants : Shri Sreenivasa Rao V

Counsel for respondent No.1 : Shri Rama Rao Ghanta

Counsel for respondent Nos 2 to 5 : Government Pleader for Civil Supplies

Date: 01.02.2007

Per G.S.Singhvi, CJ

Feeling aggrieved by order dated 21.09.2006 passed by the learned Single Judge in Writ Petition No.1281 of 2006, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

A perusal of the record shows that by an order dated 22.05.2003, Revenue Divisional Officer, Tekkali, Srikakulam District (respondent No.4) cancelled the authorization of respondent No.1 to work as fair price shop dealer at Thammalapuram on the ground of violation of Clauses 4 and 16 of the Andhra Pradesh Scheduled Commodities (Regulation, Distribution, Control and Supply) Order, 1973 (for short 'the 1973 Order'). The appeal and revision preferred by respondent No.1 were dismissed by Joint Collector, Srikakulam (respondent No.3) and Collector, Srikakulam (respondent No.2) respectively by their orders dated 26.04.2005 and 07.10.2005.

Respondent No.1 challenged the cancellation of her authorization in Writ Petition No.1281 of 2006 by contending that the charges levelled against her were totally unfounded and the same could not have been made basis for cancellation of her authorization. She

further pleaded that the action of respondent No.4 is vitiated due to violation of the rules of natural justice, inasmuch as before cancelling the authorization, respondent No.4 did not hold any enquiry and did not give her opportunity to controvert the allegation of violating Clauses 4 and 16 of the 1973 Order. She also filed an application for interim relief, which was registered as WPMP.No.12527 of 2006.

On 28.10.2006, the learned Singe Judge passed the following order:

"Heard both sides.

Prima facie, I do not see any infirmity, illegality or otherwise to interfere with the cancellation of the fair price shop dealership of the petitioner as 6-A proceedings were went against the petitioner.

It is stated questioning the 6-A proceedings the petitioner has been filed an appeal before the District and Sessions Judge, Srikakulam under Section 6-C of the Act. It is stated that if he succeeds in the appeal, he is entitled for restoration of dealership.

Having regard to the facts and circumstances, the respondents are directed to make temporary arrangements for distribution of essential commodities but the permanent dealer may not appointed until further orders. Notice."

In the meanwhile, by an order dated 25.1.2006, respondent No.4 appointed the appellant as fair price shop dealer, Thammalapuram. This was preceded by an advertisement and interview of the eligible applicants. For convenient reference, the relevant extracts of order dated 25-1-2006 are reproduced below:

"The F.P. shop, Thamalapuram is fallen vacant due to cancellation of authorization held by the regular F.P. Shop Dealer, Thamalapuram, as she was committed certain irregularities in distribution of E.Cs. Fresh notification was issued calling for applications from OC women in the reference 6th read above to fill up the vacancy on regular basis. In response to the notification issued 6(six) application applications were received to this office in the time stipulated.

Interviews was conducted on 25.01.2006 as per the schedule. The merits and demerits of the applicants and the marks secured by them are as detailed below:

Sl. No.	Name/ address of the applicant	Caste	Date Of Birth	Educati-onal quail-fication	Marks attained Qualifi-cation	Addl. Qualifi-cation	Know-ledge in Cs Matters General Matter	Total
1	Bowrusingi Kathamma, W/o Arjuna Rao	ST	7.5.84	10th passed	Absent			
2	Polaki Bharathi, W/o Thirupathi Rao	BC	26.7.82	B.Sc.	25	10	30	65
3	Kanithi Kumari, W/o Rama Krishna	BC	30.8.77	PUC	25	5	15	45
4	Addujaya Lakshmi, D/o Sunkanna	ST	4.2.84	10th passed	25	-	2	45
5	Wesmapalli Dhanalakshmi, D/o Naidu	ST	8.2.82	Inter-Mediate	25	5	15	45
6	Temburu Karuvamma	ST	5.5.87	10th passed	25	-	15	40

The applicants shows above, Item No.1 has attended to interview and the remaining five members have attended to interview on 25.1.2006. Among the five application, item NO.2 Smt. Polanki Bharathi, W/o Thirupathirao possesses higher educational qualification and secured high marks in the interview than the other candidates. Hence the application of Smt. Polaki Bharathi, W/o Thirupathi Rao has taken into consideration and appointed her as F.P. Dealer, Thamalapuram of Nandigam Mandal.

Smt. Polaki Bharathi, W/o Thirupathirao of Thamalapuram Village of Nandigam Mandal is hereby directed to remit Rs.3,000/- (Rupees three thousand only) towards trade deposit by means of Demand Draft in favour of District Manager, Nandigam. She also directed to submit the proposals through Mandal Revenue Officer, Nandigam for sanction of authorization. She should work as F.P. Shop Dealer, Thamalapuram continuously for five years as per the norms in force, otherwise the trade deposit will be forfeited to Government. She should lift and distribute the E.Cs. to the consumers as per route programme."

In the counter filed on behalf of the official respondents, it was specifically pleaded that by an order dated 25-1-2006, the appellant had been appointed as fair price shop dealer, Thammalapuram. However, without taking cognizance of this fact and without requiring respondent No.1 to implead the appellant as party to the writ petition, the learned Single Judge quashed order dated 22.05.2003 passed by respondent No.4 for cancellation of the authorization of respondent No.1. The operative part of the order passed by the learned Single Judge reads as under:

"There is no necessity to go into all the details. The order passed by the Primary authority dated 22.05.2003 itself indicates that no enquiry, as such, has been conducted into the matter before passing the order under the control order for cancellation of the authorization of the petitioner. Further, no cogent or convincing reasons are furnished. Therefore, I am of the opinion that the order of the primary authority as confirmed by the appellate authority as well as the revisional authority is liable to be set aside. Since it is more than four years, there is no need for even conducting a fresh inquiry into the matter. However, it is suffice to direct the respondents to treat the period from the date of cancellation till today as a measure of punishment and the respondents are directed to restore the authorization of the petitioner forthwith."

We have heard learned counsel for the parties. In our opinion, the order under challenge is liable to be set aside on the short ground that the appellant, whose right to operate the fair price shop at Thammalapuram is vitally affected on account of the restoration of the authorization of respondent No.1, was not impleaded as party to the writ petition and, on that account, she did not get an opportunity to contest the case set up by respondent No.1. At the cost of repetition, we deem it proper to mention that the appellant had been appointed as fair price shop dealer on 25.01.2006 i.e. three days before the passing of interim order by the learned Single Judge in W.P.M.P.No.1527 of 2006. The factum of the appellant's appointment as fair price shop dealer at Thammalapuram was specifically mentioned in the counter filed on behalf of the official respondents, but the learned Single Judge allowed the writ petition filed by respondent No.1 – Smt. K. Indira and restored her authorization without insisting on impleadment of the appellant as party to the writ petition and without quashing the appointment of the appellant. It is, thus, evident that the order under challenge is vitiated due to violation of the rules of natural justice.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and Writ Petition No.1281 of 2006 is remanded to the learned Single Judge for fresh adjudication. The case be listed before an appropriate Bench on 26.02.2007.

In the meanwhile, the writ petitioner (respondent No.1 herein) may apply for impleadment of the appellant as party to the writ petition and also make prayer for quashing order dated
25-1-2006. The appellant is also given liberty to apply for her impleadment as party to Writ Petition No.1281 of 2006.

As a sequel to disposal of the appeal, W.A.M.P (SR). No.126744 of 2006 filed by the appellant for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

01.02.2007

ksld